FILED: November 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1744
(3:24-cv-01797-CMC)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

LEONARDO BROWN, as Richland County Administrator; DARRELL JACKSON, SR.; ROSE ANN ENGLISH; ALFRED T. GUESS; MARJORIE GUESS; MARSHALL GREEN; RICHLAND COUNTY COUNSEL

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

FILED: December 3, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1744
(3:24-cv-01797-CMC)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

LEONARDO BROWN, as Richland County Administrator; DARRELL JACKSON, SR.; ROSE ANN ENGLISH; ALFRED T. GUESS; MARJORIE GUESS; MARSHALL GREEN; RICHLAND COUNTY COUNSEL

Defendants - Appellees

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Nwamaka Anowi, Clerk

FILED: December 23, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1744
(3:24-cv-01797-CMC)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

LEONARDO BROWN, as Richland County Administrator; DARRELL JACKSON, SR.; ROSE ANN ENGLISH; ALFRED T. GUESS; MARJORIE GUESS; MARSHALL GREEN; RICHLAND COUNTY COUNSEL

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Quattlebaum, Judge Rushing, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: December 31, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1744
(3:24-cv-01797-CMC)

THURMOND R. GUESS, SR.

Plaintiff - Appellant

v.

LEONARDO BROWN, as Richland County Administrator; DARRELL JACKSON, SR.; ROSE ANN ENGLISH; ALFRED T. GUESS; MARJORIE GUESS; MARSHALL GREEN; RICHLAND COUNTY COUNSEL

Defendants - Appellees

MANDATE

The judgment of this court, entered November 21 2024, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Thurmond Guess, Sr., Plaintiff, vs. Leonardo Brown as Richland County Administrator; Richland County Counsel [*sic*]; Darrell Jackson, Sr.; Rose Ann English; Alfred T. Guess; and Marjorie Guess, Defendants.	Civil Action No. 3:24-1797-CMC **ORDER**

This matter is before the court on Plaintiff's motion for reconsideration pursuant to Federal Rules of Civil Procedure 59(e), 60(b), and 60(b)(1). ECF No. 24. Plaintiff also has filed a response to the order to show cause, addressing the court's notification of its intention to impose a narrow pre-filing injunction. ECF No. 21.

Rule 59 notes that a motion for a new trial or to alter/amend the judgment must be filed no later than 28 days after the entry of the judgment. The Fourth Circuit Court of Appeals has interpreted Rule 59(e) of the Federal Rules of Civil Procedure to allow the court to alter or amend an earlier judgment: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (quoting *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of judgment, nor may they be used to argue a case under a novel theory that the party had the ability to address in the first instance." *Pac. Ins. Co.*, 148 F.3d at 403. Relief under Rule 59(e) is

"an extraordinary remedy which should be used sparingly." *Id.* (internal marks omitted). "Mere disagreement does not support a Rule 59(e) motion." *Becker*, 305 F.3d at 290 (quoting *Hutchinson v. Stanton*, 994 F.2d 1076, 1082 (4th Cir. 1993)).

Fed. R. Civ. P. 60(b) allows for relief from judgment or order for various reasons, including newly discovered evidence, mistake or excusable neglect, fraud, a void judgment, or other reasons. Specifically, Rule 60(b)(1) allows relief from a final order based on mistake, inadvertence, surprise, or excusable neglect. Such a motion must be made within a year of the challenged judgment or order.

> Federal Rule of Civil Procedure 60(b)(6) allows for relief from a final judgment for "any other reason that justifies relief." While this catchall reason includes few textual limitations, its context requires that it may be invoked in only "extraordinary circumstances" when the reason for relief from judgment does not fall within the list of enumerated reasons given in Rule 60(b)(1)-(5).

Aikens v. Ingram, 652 F.3d 496, 500 (4th Cir. 2011). A Rule 60(b)(6) motion must be filed on "just terms," within "a reasonable time," and "have a meritorious claim or defense and that the opposing party not be unfairly prejudiced by having the judgment set aside." *Id.* (citing *Nat'l Credit Union Admin. Bd. v. Gray*, 1 F.3d 262, 264 (4th Cir. 1993)).

Plaintiff's motion argues the court's order dismissing his case violates the constitution, was affected by error of law and unlawful procedure, and was arbitrary or capricious. ECF No. 24 at 1. He contends that because his previous cases were dismissed without prejudice, he was free to refile his case, which he did. He asserts the court violated his Seventh Amendment right to a trial by jury. *Id.* at 2. In addition, he believes he may bring an action under § 1983 despite most named

Defendants not being state actors, as required by that statute. He requests the court either reinstate the case or "dismiss the Plaintiff case with prejudice so the Plaintiff can appeal the case to a higher court." *Id.*

The court previously found the Complaint did not set forth a viable federal claim under § 1983 because Defendants other than Brown were not state actors, and he failed to state a claim against Brown under § 1983. Claims under *Monell* are restricted to municipalities and not a single actor, and Plaintiff did not state a policy or custom at play here nor impact on anyone other than him. There were no separate claims made against Richland County Council, and if Plaintiff's intention was to allege a *Monell* claim against the Council, he did not identify a policy or custom that impacted him. Accordingly, the court dismissed Plaintiff's Amended Complaint without prejudice and without issuance and service of process.

Plaintiff has not raised sufficient grounds to grant relief under Rule 59(e). There has been no intervening change in the law or new evidence not previously available. He may be attempting to allege clear error or a manifest injustice; however, the grounds for dismissal have been explained to him in multiple orders. He disagrees with the result, but this is not a reason for relief under Rule 59(e). As for Rule 60(b)(1), as noted above, the court disagrees there is error or mistake in its previous order(s). Nor does there appear a reason to apply the catchall category of Rule 60(b)(6). Accordingly, the court will not reopen the case. Plaintiff's motion for reconsideration (ECF No. 24) is therefore denied.

However, based on Plaintiff's request, the court will amend its previous order (ECF No. 21) to dismiss this action with prejudice. Plaintiff has taken multiple opportunities to attempt to

bring his claims, and it does not appear he can amend to state a viable claim under § 1983. Accordingly, his claims are hereby dismissed with prejudice to allow Plaintiff to appeal to a higher court.

Plaintiff also objects to the imposition of a pre-filing injunction. ECF No. 25. He notes such an injunction would cause irreparable harm to Plaintiff and would violate his constitutional rights. Based on Plaintiff's apparent intention to appeal this action to a higher court after dismissal with prejudice, the court will not impose a pre-filing injunction at this time.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
July 10, 2024

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

THURMOND GUESS SR.,
Plaintiff
v.
Leonardo Brown as Richland County Administrator, Richland County Counsel, Darrell Jackson Sr, Rose Ann English, Alfred T. Guess, Marjorie Guess,
Defendants

Civil Action No. 3:24-cv-01797-CMC

AMENDED JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

☒ the plaintiff, Thurmond Guess Sr., take nothing of the defendants, Leonardo Brown as Richland County Administrator; Richland County Counsel; Darrell Jackson Sr; Rose Ann English; Alfred T. Guess; and Marjorie Guess, and this action is dismissed with prejudice.

This action was *(check one)*:

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☒ decided by the Court, the Honorable Cameron McGowan Currie, Senior US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge Bristow Marchant, which recommended dismissal.

Date: July 10, 2024

ROBIN L. BLUME, CLERK OF COURT

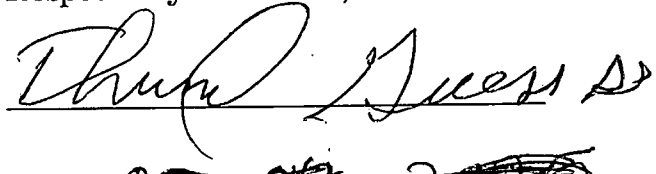
s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 05-28-2025

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Thurmond Guess, Sr.,	)	No. 3:24-cv-1797-CMC-BM
	)	
Plaintiff,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	
Leonardo Brown; Darrell Jackson, Sr.; Rose Ann English; Alfred T. Guess; Marjorie Guess; Marshall Green,	)	
	)	
Defendants,	)	
	)	

Thurmond Guess, Sr. ("Plaintiff"), proceeding pro se and in forma pauperis, brings this action against the above-named Defendants purportedly under 42 U.S.C. § 1983 alleging violations of his rights. ECF Nos. 1; 1-2. Plaintiff is a non-prisoner litigant. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), D.S.C., the undersigned Magistrate Judge is authorized to review such petitions for relief and submit findings and recommendations to the District Judge. For the reasons below, this action is subject to summary dismissal.

BACKGROUND

Plaintiff commenced this action by filing a document that was construed as a complaint under 42 U.S.C. § 1983, ECF No. 1, along with supporting documents, ECF No. 1-1. Thereafter, Plaintiff filed a complaint on the standard form. ECF No. 1-2. The Court construes these documents together as the Complaint filed in this matter.

Plaintiff brings this action seeking money damages as the result of Defendants' purported conduct in taking his private property in violation of state law and the United States Constitution. *Id.* at 2. According to Plaintiff, Defendants Jackson, Green, and English issued an "illegal, false

Easement Right of Way Deed to Richland County" on March 10, 1990, and March 18, 1991. *Id.* at 5. Plaintiff contends his father was deceased when the easement was signed and filed. *Id.* Plaintiff received a copy of the easement from his sister in October 2021. *Id.* Plaintiff alleges that Defendant Brown and Richland County Council have refused to return the property back to him. *Id.* Plaintiff alleges that all Defendants acted together to deprive Plaintiff of his rights. *Id.* For his injuries, Plaintiff contends that he has suffered mental distress which contributed to Plaintiff suffering a heart attack on January 25, 2023. *Id.* For his relief, Plaintiff seeks actual damages in the amount of $100 from each Defendant, punitive damages, and compensatory damages. *Id.* at 8. Plaintiff brings causes of action under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978),[1] and under 42 U.S.C. 1983 for violations of his Fifth and Fourteenth Amendment rights. ECF No. 1 at 5–6.

STANDARD OF REVIEW

Plaintiff filed this action pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*,

[1] *Monell* held that municipalities cannot be held liable for alleged actions of their employees on a respondeat superior theory. *Monell*, 436 U.S. 691. "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Id.*

504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990). Although the court must liberally construe a pro se complaint, the United States Supreme Court has made it clear a plaintiff must do more than make conclusory statements to state a claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face, and the reviewing court need only accept as true the complaint's factual allegations, not its legal conclusions. *Iqbal*, 556 U.S. at 678–79.

DISCUSSION

Claims pursuant *Monell*

Although Plaintiff cites *Monell*, he has not alleged facts showing that the circumstances required for a *Monell* claim are present in his case. Although Plaintiff alleges that he has presented "municipal action that was the moving force behind the [] unconstitutional policies and practices that led to and included that harmed the plaintiff in this action," ECF No. 1 at 5, he has not shown a policy or custom and has only alleged actions specific to his own case. Further, he has sued only individuals and not a municipality. Therefore, Plaintiff has not shown that *Monell* provides a viable claim in this case.

Constitutional Claims

Although Plaintiff indicates he is suing for violations of his Fifth and Fourteenth Amendment rights, all of the Defendants except Brown appear to be private citizens who are not responsible for due process nor subject to liability under 42 U.S.C. § 1983. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 940 (1982) (finding purely private conduct is not actionable under § 1983). Therefore, Plaintiff has failed to state a viable cause of action against Darrell Jackson, Sr., Rose Ann English, Alfred T. Guess, Marjorie Guess, and Marshall Green.

Further, although Plaintiff sues Brown as the Richland County Administrator, he has not alleged facts showing that Brown denied him due process, as the easement was filed in 1990,[2] well before Brown was in his position. The Supreme Court has explained that "[b]ecause vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official

[2] The undersigned also notes that even if this court had jurisdiction over this case, it is subject to dismissal because it was filed outside of the statute of limitations.

defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676; *see Slakan v. Porter*, 737 F.2d 368, 372–74 (4th Cir. 1984) (finding officials may be held liable for the acts of their subordinates, if the official is aware of a pervasive, unreasonable risk of harm from a specified source and fails to take corrective action as a result of deliberate indifference or tacit authorization). Plaintiff alleges he informed Brown on February 15, 2022, that "this Easement right-of way was a scam." ECF No. 1 at 5. He further alleges Defendants "are holding the plaintiff['s] land illegal[ly]." *Id.* However, these allegations are insufficient to show Brown violated his constitutional rights. Therefore, Plaintiff fails to state a cause of action against Brown.

Duplicative Action

Finally, the undersigned is constrained to note that Plaintiff previously brought two cases in this Court making almost identical allegations against the same Defendants as those in the present case. *See Guess v. Brown*, No. 3:23-cv-2957-CMC ("*Guess I*"); *Guess v. Brown*, No. 3:23-cv-6408-CMC ("*Guess II*"). Plaintiff's Complaint in *Guess I* was dismissed for his failure to set forth a viable federal claim. Although Plaintiff did not enumerate a claim brought pursuant to *Monell* in his amended complaint in *Guess I*, he did mention the case in his objections. ECF Nos. 25, 31. The Honorable Cameron McGowan Currie, United States District Judge, found:

> The court agrees with the Magistrate Judge the Amended Complaint does not set forth a viable federal claim under § 1983 or the other criminal statutes under which Plaintiff attempts to bring claims. Plaintiff's objections are overruled for the reasons stated in the Report: he may not bring a civil action under a criminal statute, Defendants other than Brown are not state actors, and he fails to state a claim against Brown under § 1983. Claims under *Monell* are restricted to municipalities and not a single actor. After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's

> objections, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's Amended Complaint is hereby summarily dismissed without prejudice and without issuance and service of process.

Guess I, ECF No. 33 at 3. Plaintiff's complaint in *Guess II* was dismissed for the same reasons, with Judge Currie finding as follows:

> The court agrees with the Magistrate Judge the Amended Complaint does not set forth a viable federal claim under § 1983 or *Monell*. Plaintiff's objections are overruled for the reasons stated in the Report: he has not alleged a specific policy that was violated; Defendants other than Brown are not state actors, and he fails to state a claim against Brown under § 1983. Claims under *Monell* are restricted to municipalities and not a single actor. In addition, this case has essentially identical allegations and objections as Plaintiff's previous case. Plaintiff is warned if he attempts to file another case with the same allegations, a pre-filing injunction may be ordered. After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's Amended Complaint is hereby summarily dismissed without prejudice and without issuance and service of process.

Guess II, ECF No. 19 at 2–3.

Accordingly, in addition to the other reasons discussed herein, the present Complaint is subject to dismissal as redundant to the claims in *Guess I* and *Guess II*. *See Cottle v. Bell*, No. 00-6367, 2000 WL 1144623, at *1 (4th Cir. Aug. 14, 2000) ("Because district courts are not required to entertain duplicative or redundant lawsuits, they may dismiss such suits as frivolous pursuant to § 1915(e)."); *Aziz v. Burrows*, 976 F.2d 1158 (8th Cir. 1998) ("[D]istrict courts may dismiss a duplicative complaint raising issues directly related to issues in another pending action brought by the same party."); *Aloe Creme Labs., Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970)

("The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time. Once was sufficient.").

RECOMMENDATION

Accordingly, it is recommended that this action be dismissed without prejudice and without service of process.

IT IS SO RECOMMENDED.

/s Bristow Marchant
United States Magistrate Judge

May 16, 2024
Greenville, South Carolina

Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
250 East North Street, Suite 2300
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Thurmond Guess, Sr., Plaintiff, vs. Leonardo Brown as Richland County Administrator; Richland County Counsel [*sic*]; Darrell Jackson, Sr.; Rose Ann English; Alfred T. Guess; and Marjorie Guess, Defendants.	Civil Action No. 3:24-1797-CMC **ORDER**

This matter is before the court on review of Plaintiffs' *pro se* Complaint. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report").

On May 16, 2024, the Magistrate Judge issued a Report and Recommendation ("Report") recommending the Complaint be summarily dismissed without prejudice and without issuance and service of process. ECF No. 16. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections on May 30, 2024. ECF No. 19.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made

by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.") (citation omitted).

The Report recommends dismissal of Plaintiff's claims. ECF No. 16. Specifically, it recommends dismissal of the *Monell* claim because Plaintiff has shown no policy or custom at work here, and alleged only actions specific to his own case. *Id.* at 4. As for the other constitutional claims, the Report found all individual Defendants other than Brown are private citizens and thus are not subject to liability under 42 U.S.C. § 1983. In addition, Brown is the current County Administrator, and as such Plaintiff alleged no facts showing Brown denied him due process on an easement filed in 1990. *Id.* The Report also notes this action is duplicative of two other cases previously filed and summarily dismissed. See Case No. 3:23-cv-2957; No. 3:23-cv-6408. Accordingly, the Magistrate Judge recommends this action be dismissed as duplicative. *Id.* at 6.

In his objections, Plaintiff alleges he has sufficiently pleaded the elements of an action under 42 U.S.C. § 1983 and a *Monell* claim. ECF No. 19 at 2. He contends he warned Brown and the County Council they were "acting under color of state law" and violating the constitution, but Brown and the Council sent a letter they were not going to give the property back. *Id.* Plaintiff also asserts the court misconstrued *Monell* and that he named the County Council as a Defendant,

which was left off the Report.[1] *Id.* at 2-3. He also objects to the finding that this is a duplicative action. *Id.* at 3.

The court agrees with the Magistrate Judge the Complaint does not set forth a viable federal claim under § 1983. Plaintiff's objections are overruled for the reasons stated in the Report: Defendants other than Brown are not state actors, and he fails to state a claim against Brown under § 1983. Claims under *Monell* are restricted to municipalities and not a single actor, and Plaintiff does not state a policy or custom at play here nor impact on anyone other than him. There are no separate claims made against Richland County Council, and if his intention was to allege a *Monell* claim against the Council, he does not identify a policy or custom that impacted him. After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's Amended Complaint is hereby summarily dismissed without prejudice and without issuance and service of process.

In addition, the court previously warned Plaintiff that if he continued to file cases with the same or similar allegations, a pre-filing injunction may be entered. Case No. 3:23-6408, at ECF

---

[1] The court notes this is the first time Plaintiff has clearly indicated he wishes Richland County Council to be considered a separate Defendant from Leonardo Brown. Based on the wording and spelling in his Complaint, the court interpreted one Defendant as "Leonardo Brown, as Richland County Administrator, Richland County Counsel." See ECF No. 1 at 2. Based on Plaintiff's assertions in his objections, it appears he intended to list two Defendants, Leonardo Brown, as Richland County Administrator, and Richland County Council, with the same address. The court hereby directs the clerk to separate those Defendants on the docket. However, this change does not impact the court's ultimate finding in this case.

No. 19. The Magistrate Judge reiterated this in the Report as well. Federal courts may issue prefiling injunctions when vexatious conduct hinders the court from fulfilling its constitutional duty. *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004). Before enjoining the filing of further actions, however, the district court must afford the litigant notice and an opportunity to be heard. *Id.* at 819. In determining whether a prefiling injunction is substantively warranted, a court must weigh all the relevant circumstances, including (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions. *Id.* at 819. Moreover, even if a judge, after weighing the relevant factors, properly determines that a litigant's abusive conduct merits a prefiling injunction, the judge must ensure that the injunction is narrowly tailored to fit the specific circumstances at issue. *Id.* at 818.

In this case, the court finds Plaintiff has a history of filing *pro se* cases regarding the same issue: the easement he alleges was fraudulently obtained back in 1990. Despite multiple court orders explaining why his allegations are not cognizable in federal court, Plaintiff continues to file highly similar cases – this is his third. Both Magistrate Judges and the undersigned have explained why there is not a good faith basis for his claims. This is creating a considerable burden on the court to continue to explain the same reasoning to Plaintiff multiple times. However, it does not appear there is an alternative sanction that would accomplish the same end. Accordingly, the court hereby notifies Plaintiff of its intention to impose a narrow pre-filing injunction, prohibiting him

from filing additional cases (or additional motions to amend his Complaint in any of his previous or current cases) regarding the same allegedly fraudulent easement in federal court. Plaintiff shall have 21 days to respond to this notice to show cause why a pre-filing injunction should not be granted. Failure to do so will result in the injunction being entered without further input from Plaintiff.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
June 4, 2024